

Vol 311

Office - Supreme Court, U. S.

FILED

OCT 29 1940

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 534

W. J. RAY,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

FRANCIS MURPHY,
Counsel for Petitioner.



INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Brief in support of petition	5

CASES CITED.

<i>Fillippon v. Albion Vein Slate Co.</i> , 250 U. S. 76, 63 L. Ed. 853, 39 S. C. R. 435	2, 3, 6, 7
<i>Shields v. United States</i> , 273 U. S. 583, 47 S. C. R. 478, 71 L. Ed. 787	2, 3, 6, 7

STATUTES CITED.

Criminal Rules, Rule XI	5
Judicial Code, Sec. 240, as amended by the Act of February 13, 1925, 28 U. S. C. A. 347	6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 534

W. J. RAY,

vs.

Petitioner,

THE UNITED STATES OF AMERICA.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.**

To the Honorable the Supreme Court of the United States:

The petition of W. J. Ray respectfully shows to this Honorable Court:

Petitioner was convicted (R. 89) in the District Court of the United States for the District of North Dakota, upon an indictment (R. 1) charging him with aiding and abetting an officer of an insured bank in misapplying the funds and credits of said bank, in violation of the provisions of Section 5209 of the Revised Statutes of the United States, as amended (U. S. C. A., Title 12, Section 592).

Upon such conviction, he was sentenced to imprisonment for a term of three years (R. 90).

After the matter had been submitted to the Jury, and after it had deliberated thereon for about twenty-three

hours, the trial court communicated with the jury, out of court and in the absence of the petitioner and his counsel (R. 291-306).

An appeal was duly perfected from the judgment of conviction to the Circuit Court of Appeals for the Eighth Circuit (R. 291-292).

Thereafter, upon leave of the Circuit Court of Appeals, the alleged erroneous communication of the District Court with the jury was presented upon motion for a new trial (R. 291-300), which motion was denied (R. 303-305).

The matter was thereupon certified (R. 290-307) to the Circuit Court of Appeals, upon a supplemental record pursuant to its direction (R. 291-292).

On September 23, 1940, the Circuit Court of Appeals filed its opinion, wherein the judgment and sentence was affirmed (R. 310), holding that said erroneous communication was non-prejudicial (R. 320).

Thereupon a petition for rehearing, limited to a consideration of the question of said erroneous communication and the decision of the Circuit Court of Appeals thereon was duly filed (R. 323), which petition was, on October 15, 1940, denied (R. 326).

Thereupon, a motion for an order staying the issuance of the mandate was duly filed (R. 326), which motion, on October 18, 1940, was granted for a period of thirty days (R. 327).

Your petitioner is advised that the Circuit Court of Appeals was in error in affirming the judgment of the District Court, and should have directed a new trial in conformity with the rule announced in:

Fillippon v. Albion Vein Slate Co., 250 U. S. 76, 63 L. Ed. 853, 39 S. C. R. 435;

Shields v. United States of America, 273 U. S. 583, 47 S. C. R. 478, 71 L. Ed. 787.

Your petitioner is advised that the decision of the Circuit Court of Appeals, holding, in effect, that the erroneous communication of the trial court with the jury was not prejudicial and did not require a reversal is in conflict with applicable decisions of this Honorable Court.

Fillippon v. Albion Vein Slate Co., 250 U. S. 76, 63 L. Ed.

853, 39 S. C. R. 435;

Shields v. United States of America, 273 U. S. 583, 47

S. C. R. 478, 71 L. Ed. 787.

Your petitioner presents herewith, as a part of this petition, a transcript of the record in the Circuit Court of Appeals.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Eighth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case, numbered and entered on its docket No. 11641—W. J. Ray, appellant, vs. United States of America, appellee, and that the judgment of that court may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

W. J. RAY,
By FRANCIS MURPHY,
Counsel for Petitioner,
Fargo, North Dakota.